

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SANDRA INGALLS,)	DIVISION ONE
)	
Respondent,)	No. 63368-6-I
)	
v.)	
)	UNPUBLISHED OPINION
ICMA-RC SERVICES, LLC,)	
a Delaware corporation,)	
)	
Defendant,)	
)	
and)	
)	
LYNNE E. BURGETT and)	
BRIAN J. INGALLS,)	
)	
Appellants.)	FILED: February 16, 2010
_____)	

Dwyer, A.C.J. — We give unambiguous contract terms their ordinary meaning, and we attempt to give meaning and effect to every word in the contract. Lawrence Ingalls had two deferred compensation plans through two different employers that were managed by the same administrator.¹ A provision in the contract for the first plan specifies that the last-dated beneficiary designation filed with the plan administrator for any participating employer governs the distribution of all of the employee's accounts. In 2003, Lawrence designated his second wife as the beneficiary of his second plan. After Lawrence's death, his children from his first marriage disputed whether the

¹ Because two of the parties and the decedent share the same surname, we refer to all of the parties by their first names.

designation in 2003 affected the distribution of his first plan, for which the children had previously been the designated beneficiaries. Because the contract unambiguously provides that the last-dated beneficiary designation filed for any employer modifies the first plan, Lawrence's designation of his second wife as the beneficiary for his second plan controls the distribution of both of Lawrence's plans. Accordingly, we affirm the trial court's order granting summary judgment.

I

Lawrence maintained two tax-deferred retirement plans, which were funded exclusively by his own contributions, known as 457 Deferred Compensation Plans because they were established pursuant to section 457 of the Internal Revenue Code. See 26 U.S.C. § 457. The first plan was established with an employer, Community Transit, for which he worked from 1991 to 1996. The other plan was established with a later employer, the City of Snohomish, for which he worked from 2002 to 2006. Both deferred compensation plans are administered by the ICMA-Retirement Corporation (ICMA-RC).² The two plans have different plan numbers but are maintained under the same account number.

IMCA-RC has two standard documents, titled "Deferred Compensation Plan Document" and "Declaration of Trust of ICMA Retirement Trust," both of

² The ICMA-RC maintains a license agreement with the International City/County Management Association to use the association's name. Web site available at: <http://icma-rc.org/xp/rc/about> (follow "Relationship with ICMA" hyperlink).

which are provided to all employees who enroll in a deferred compensation plan.

These documents are incorporated by reference into all agreements.

To initially enroll in a deferred compensation plan, an employee must complete a form that constitutes the “Joinder Agreement,” a term defined in the plan documents as “[a]n agreement entered into between an Employee and the Employer, including any amendments or modifications thereof.” This document allows the employee to establish the amount of compensation to be deferred, the investments to which the deferred funds are to be directed, and the designated beneficiaries of the plan.

Employees can later modify their choices by completing a different form. Throughout the years, ICMA-RC adjusted the language of the form that employees must complete to modify their deferred compensation plans. In 1991, when Lawrence completed a form to change the amount of his compensation that was being deferred, the back of the form contained several provisions under the title “General Information,” including the now-debated paragraph:

3. . . . The employee understands that the last dated designation of a beneficiary or beneficiaries filed with the ICMA Retirement Corporation as administrator for any participating employer, shall, in the event of death prior to full distribution after retirement, control the actions of the ICMA Retirement Corporation, as administrator, in the distribution of the deferred compensation funds, assets, and accumulations in all ICMA Retirement Corporation accounts established for the employee.

In 1994, Lawrence modified his Community Transit plan, designating Brian and Lynne as his primary beneficiaries. This was the last modification

Lawrence made to his Community Transit plan. In 2001, Lawrence married Sandra Ingalls. Then, in 2003, Lawrence changed the beneficiary of his City of Snohomish plan, designating Sandra as the sole primary beneficiary and Brian and Lynne as contingent beneficiaries, and also reduced the amount of his compensation being deferred to zero. Lawrence died unexpectedly in 2006.

After Lawrence's death, Sandra applied for and received the funds from the City of Snohomish plan. She later attempted to withdraw the funds from the Community Transit plan, but ICMA rejected her request because it believed that "[a]n agreement with one Employer may not be applied to any other Employer." ICMA-RC construed its documentation as designating Brian and Lynne as the beneficiaries of the Community Transit plan.

Sandra sued ICMA-RC and Lawrence's children. Sandra's claims against ICMA-RC were dismissed and the funds from the Community Transit plan were tendered into the court registry pending resolution of this dispute. The trial court granted summary judgment in favor of Sandra.

Brian and Lynne moved for reconsideration based on new evidence. They submitted the ICMA-RC Deferred Compensation Plan Document from 1989, 2001, and 2006, each of which include a "Definitions" section and which provide the general plan provisions. Among the relevant defined terms are the definitions of "Beneficiary" and "Joinder Agreement." "Beneficiary" is defined as:

The person or persons designated by the [employee] in his Joinder Agreement who shall receive any benefits payable hereunder in the event of the [employee]'s death.

“Joinder Agreement” is defined as:

An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee’s Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

The trial court denied the motion for reconsideration. Brian and Lynne appeal.

II

We review de novo a summary judgment order, engaging in the same inquiry as the trial court. Simpson Tacoma Kraft Co. v. Dep’t of Ecology, 119 Wn.2d 640, 646, 835 P.2d 1030 (1992). Where there are no material facts in dispute, we review de novo the legal effect of a contract. Postlewait Constr., Inc. v. Great Am. Ins. Cos., 106 Wn.2d 96, 100, 720 P.2d 805 (1986); Rosen v. Ascentry Techs., Inc., 143 Wn. App. 364, 369, 177 P.3d 765 (2008) (quoting Keystone Masonry, Inc. v. Garco Constr., Inc., 135 Wn. App. 927, 932, 147 P.3d 610 (2006)). The parties agree that there are no disputed facts.

III

The parties disagree about the meaning of the provision contained in the 1991 form regarding the last-dated beneficiary designation. Brian and Lynne contend that a change in the beneficiary under the City of Snohomish plan did not affect the Community Transit plan. The trial court disagreed, as do we.

“In construing a written contract, the basic principles require that (1) the intent of the parties controls; (2) the court ascertains the intent from reading the contract as a whole; and (3) a court will not read an ambiguity into a contract that is otherwise clear and unambiguous.” Mayer v. Pierce County Med. Bureau, Inc., 80 Wn. App. 416, 420, 909 P.2d 1323 (1995). We may interpret contract terms as a matter of law when interpretation of the contract does not depend on the use of extrinsic evidence. Tanner Elec. Coop. v. Puget Sound Power & Light Co., 128 Wn.2d 656, 674, 911 P.2d 1301 (1996).

The words in a contract are generally given their plain, ordinary meaning. Hearst Commc’ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 504, 115 P.3d 262 (2005). “A contract provision is ambiguous when its terms are uncertain or when its terms are capable of being understood as having more than one meaning.” Shafer v. Bd. of Trs. of Sandy Hook Yacht Club Estates, Inc., 76 Wn. App. 267, 275, 883 P.2d 1387 (1994). “A provision, however, is not ambiguous merely because the parties suggest opposing meanings.” Mayer, 80 Wn. App. at 421. “[A]mbiguity will not be read into a contract where it can reasonably be avoided.” McGary v. Westlake Investors, 99 Wn.2d 280, 285, 661 P.2d 971 (1983).

Where possible, we must construe a contract to give meaning and effect to every word. Stokes v. Polley, 145 Wn.2d 341, 346-47, 37 P.3d 1211 (2001); Diamond B Constructors, Inc. v. Granite Falls Sch. Dist., 117 Wn. App. 157, 165, 70 P.3d 966 (2003) (citing City of Seattle v. Dep’t of Labor & Indus., 136 Wn.2d

693, 698, 965 P.2d 619 (1998)). “An interpretation of a writing which gives effect to all of its provisions is favored over one which renders some of the language meaningless or ineffective.” Wagner v. Wagner, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980). “[E]very word and phrase must be presumed to have been employed with a purpose and must be given a meaning and effect whenever reasonably possible.” Ball v. Stokely Foods, 37 Wn.2d 79, 83, 221 P.2d 832 (1950); see also Mayer, 80 Wn. App. at 423 (“[C]ourts favor the interpretation of a writing which gives effect to all of its provisions over an interpretation which renders some of the language meaningless or ineffective.”).

The provision in the 1991 form is unambiguous. It provides that IMCA-RC will distribute the funds of all of the employee’s IMCA-RC accounts to the beneficiary indicated on the “last dated designation of a beneficiary” that was filed with ICMA-RC for any participating employer. The 1991 form modified the contract between Lawrence and Community Transit and authorized further modification of their agreement by any beneficiary designations subsequently filed with ICMA-RC. Thus, Lawrence and Community Transit agreed, in the 1991 form, that the last-dated designation of a beneficiary that was filed with ICMA-RC for *any* participating employer would control the distribution of all of Lawrence’s ICMA-RC accounts. The 2003 form was the last-dated beneficiary designation. Therefore, it controls ICMA-RC’s distribution of all accounts that ICMA administers for any employer of Lawrence. To read this provision

otherwise, and conclude that it only intended the last-dated beneficiary designation to apply to the plan for which the form was completed, would be to render the phrase “any participating employer” meaningless. This we will not do. See Mayer, 80 Wn. App. at 423.

Although the 1991 form is unambiguous and our analysis gives meaning to each of the words in the provision, Brian and Lynne suggest a different interpretation, based primarily on two arguments.

First, Brian and Lynne argue that a plan beneficiary can be designated only in the joinder agreement between the specific employer and the employee. Therefore, they argue, the beneficiary for one plan cannot be designated within the joinder agreement for a different plan. Hence, they contend, Lawrence’s designation of Brian and Lynne as the beneficiaries of his Community Transit plan in 1994 was unaffected by Lawrence’s designation of Sandra as the beneficiary of the City of Snohomish plan in 2003. In support of these contentions, Brian and Lynne rely on the fact that the 1991 form specified that it was an agreement between the employee and the employer identified on the form³ and also on the definitions of “Beneficiary” and “Joinder Agreement.”

³ In addition to Paragraph 3, the disputed provision, the 1991 form contains a “General Information” paragraph that states:

This Employee Action Form is a deferred compensation agreement between the employer and employee identified on the reverse side that is governed by the provisions of the employer’s deferred compensation plan and administered by the [ICMA-RC].

On the 1991 form, Lawrence identified Community Transit as the employer and himself as the employee.

Brian and Lynne are correct that, because of the definitions of “Beneficiary” and “Joinder Agreement” in the ICMA-RC Deferred Compensation Plan Document, the initial agreement between Lawrence and Community Transit required that the plan beneficiary be designated in the agreement between the employee and the specific employer. However, Brian and Lynne fail to recognize that the 1991 form modified the contract between Lawrence and Community Transit, as discussed above. Therefore, their argument fails.

Second, Brian and Lynne contend that the disputed 1991 provision must be read by reference to the sentence preceding it and that reading these two sentences in conjunction with one another somehow reduces the effect of the second sentence.⁴ The first sentence informs the employee that if, upon retirement, the employee chooses to have the benefits of the plan paid out to the employee as an annuity, the employee will have to designate a beneficiary in accordance with the requirements of the annuitant. Brian and Lynne argue that reading the second sentence in conjunction with the first sentence reveals that the second sentence is not intended to amend the clear terms of the plan documents. Instead, they argue, the second sentence is intended only to inform

⁴ Paragraph 3 reads in its entirety:

3. If the benefits are paid to the employee under an option requiring the purchase of an annuity, designation or redesignation of a beneficiary or beneficiaries may have to be repeated at the time, in accordance with the requirements of the annuitant. The employee understands that the last dated designation of a beneficiary or beneficiaries filed with the ICMA Retirement Corporation as administrator for any participating employer, shall, in the event of death prior to full distribution after retirement, control the actions of the ICMA Retirement Corporation, as administrator, in the distribution of the deferred compensation funds, assets, and accumulations in all ICMA Retirement Corporation accounts established for the employee.

the employee about which beneficiary designation ICMA-RC will follow if the retired employee leaves his or her investments in an ICMA-RC account, rather than being paid in an annuity.

We read the contract as a whole, considering how the various provisions and sentences relate. See Welch Foods, Inc. v. Benton County, 136 Wn. App. 314, 325, 148 P.3d 1092 (2006). Here, the first and second sentences can be read in conjunction with one another without altering the plain meaning of the second sentence. The plain language of the entire paragraph does not suggest the interpretation urged by Brian and Lynne. Rather, it informs the employee that he or she can have the deferred compensation funds paid out in an annuity or the funds can be left with ICMA-RC, and, if the funds are left with ICMA-RC, the last-dated beneficiary designation filed with ICMA-RC for any participating employer controls ICMA-RC's distribution of the benefits. Brian and Lynne's interpretation—that the first sentence limits the effect that the second sentence has on the contract between Lawrence and Community Transit—fails to give meaning to the phrase “all participating employers.” See Diamond B Constructors, Inc., 117 Wn. App. at 165 (“We must construe a contract to give meaning to every term.”). If we construed the first sentence as somehow limiting the effect of the second sentence, we would be implying a limitation that does not otherwise exist. See Hearst Commc'ns, Inc., 154 Wn.2d at 504 (“We generally give words in a contract their ordinary, usual, and popular meaning

unless the entirety of the agreement clearly demonstrates a contrary intent.”).

Therefore, this interpretation fails.

Because the provision in the 1991 form is unambiguous, Sandra, as the last-designated beneficiary, is entitled to the proceeds.⁵

Affirmed.

Dwyer, A.C.J.

We concur:

Leach, J.

Becker, J.

⁵ The plain and unambiguous language of the contract is dispositive of the issue on appeal. Our disposition of the case eliminates the need for us to address the parties’ other arguments suggesting different methods for interpreting the contract.